

WHAT IS THE LIVING WILL?

The terminology “living will” provides us with a precise idea of what this regulation really implies.

The “will” is in its essence, the regulation heir of its roots. Here we are not going to start analysing the different variants or forms of wills as it is of no relevance, and it can even increase the confusion around this term.

And, “living”, no doubt, comes from our Latin “*vita-vitae*” (“vital” in Spanish) and makes a reference to life itself. Consequently, from a simply analysis of the term, we find that the living will is no more than a personal binding document about one’s own life.

Saying this, we could think that we, “poor mortals”, have inherited divine faculties to prepare legal regulations, something which does not cease to be an impossible pretension that pushes us again to our most modest human condition.

In general terms, **the living will is no more than a faculty that we have in order to determine in a written form what we want to be done with our lives in the case of a terminal illness**, and us having reached a state of being unable to express that wish. In other words: Do we allow or not, that we are given medical treatment so that our life is prolonged in an artificial manner or only palliative treatment for the pain?

Today, the legal development within the different Autonomous Communities that have attributed this faculty has made the regulation of this document to vary in some aspects, one from another. It should be noted that it was the Catalan Autonomous Community that was the first to regulate this regulation in the Law 21/2000, of 29th of December (art.8) but today there are regulations in Extremadura, Galicia, Madrid, Aragón and Navarra. The process they offer is different but here we are not going to analyse each norm. In some cases they are called “Previous instructions”, in others “Previous Regulations” but yes, they indicate that in most cases they are assembled within the health regulations and **the main problems this practice arouses, refer to its publicity**. It is of no use applying what the document gathers, if no one knows what we have done.

The living will is established within the same area as other regulations, some of which as a legislative study, which takes into account the possibility to decide “beforehand” what we want in the case that when the moment arrives we would not be able to decide or express our wishes. I am referring to auto-tutelage and preventive rights that can be a subject to study on another occasion.

I believe it is fundamental, and with this I finish, to define clearly with a scheme the following:

1. Concept: What is the living will? It is a personal regulation that assembles the individual’s wishes about the citizens and the medical treatment applied to his health, at the moment when he cannot, by himself, express that desire.

2. Personal Elements: To whom can it be given? All documents that deal with this form, insist it should be an adult who is free and who enjoys a sufficient legal capacity.

3. Real Elements: Content: I want to insist that the content of the “strict” living will, as it is regulated nowadays, cannot refer to more elements than to the citizens and those health treatments that the individual desires to receive and the destiny, once dead, of his body or its organs.

4. Formal elements: What form should it take? I understand, for juristic reasons, that it should be a legal document that assembles, differently (in my modest opinion) from the will due to the practical inconveniences that they provoke. Furthermore, there is a

possibility to allow it in front of witnesses, a possibility if true, and here I allow myself to advise against it, due to later validity that mentioned documents needs.

From here I leave in the air, the inconveniences and problems that up today, have not been resolved because of norms and, only in practice, are being put into evidence. I hope that those who are meant to create an adequate system of publicity will communicate tranquillity and a certainty that the desire of such a personal matter as this, will be brought into light, and they will soon find the adequate solution.

Blanca Clavijo Juaneda

Lawyer

President of the National Association of Alzheimer, AFALwithyou

AFAL Foundation Future